

# MIAMI BEACH

## PLANNING DEPARTMENT

### Staff Report & Recommendation

### Design Review Board

TO: DRB Chairperson and Members

DATE: March 01, 2016

FROM: Thomas R. Mooney, AICP  
Planning Director



SUBJECT: Design Review File No. 22911  
**2300 Bay Avenue—Modification**

The applicant, **George Lindemann**, is requesting modifications to a previously issued Design Review Approval for the construction of a new two-story home to replace an existing pre-1942 architecturally significant two-story home. Specifically, to eliminate a condition in the final order.

#### **RECOMMENDATION:**

Approval with conditions

#### **LEGAL DESCRIPTION:**

The part of Lot 12, Block 3-H, of Island No. 3 of Sunset Islands, except a triangular portion thereof, According to the Plat Thereof, as Recorded in Plat Book 40, Page 8, of the Public Records of Miami-Dade County, Florida.

#### **HISTORY:**

On September 4, 2012, the Design Review Board approved a new two-story home. On September 4, 2014 the applicant received approval for several design modifications

#### **SITE DATA:**

Zoning:	RS-3 (Residential Single Family)
Future Land Use Designation:	RS (Residential Single Family)
Lot Size:	15,150 S.F.
Proposed Lot Coverage:	~4,933 S.F. / 32.6%
Approved unit size:	7,216 S.F. (47.6%)
Approved Height:	2-stories / 30'-11", according to plans

#### **COMPLIANCE WITH DESIGN REVIEW CRITERIA:**

Design Review encompasses the examination of architectural drawings for consistency with the criteria stated below with regard to the aesthetics, appearances, safety, and function of the structure or proposed structures in relation to the site, adjacent structures and surrounding community. Staff recommends that the following criteria are found to be satisfied, not satisfied or not applicable, as hereto indicated:

1. The existing and proposed conditions of the lot, including but not necessarily limited to topography, vegetation, trees, drainage, and waterways.  
**Satisfied**
2. The location of all existing and proposed buildings, drives, parking spaces, walkways, means of ingress and egress, drainage facilities, utility services, landscaping structures, signs, and lighting and screening devices.

**Satisfied**

3. The dimensions of all buildings, structures, setbacks, parking spaces, floor area ratio, height, lot coverage and any other information that may be reasonably necessary to determine compliance with the requirements of the underlying zoning district, and any applicable overlays, for a particular application or project.

**Satisfied**

4. The color, design, selection of landscape materials and architectural elements of Exterior Building surfaces and primary public interior areas for Developments requiring a Building Permit in areas of the City identified in section 118-252.

**Satisfied**

5. The proposed site plan, and the location, appearance and design of new and existing Buildings and Structures are in conformity with the standards of this Ordinance and other applicable ordinances, architectural and design guidelines as adopted and amended periodically by the Design Review Board and Historic Preservation Boards, and all pertinent master plans.

**Satisfied**

6. The proposed Structure, and/or additions or modifications to an existing structure, indicates a sensitivity to and is compatible with the environment and adjacent Structures, and enhances the appearance of the surrounding properties.

**Satisfied**

7. The design and layout of the proposed site plan, as well as all new and existing buildings shall be reviewed so as to provide an efficient arrangement of land uses. Particular attention shall be given to safety, crime prevention and fire protection, relationship to the surrounding neighborhood, impact on contiguous and adjacent Buildings and lands, pedestrian sight lines and view corridors.

**Satisfied**

8. Pedestrian and vehicular traffic movement within and adjacent to the site shall be reviewed to ensure that clearly defined, segregated pedestrian access to the site and all buildings is provided for and that all parking spaces are usable and are safely and conveniently arranged; pedestrian furniture and bike racks shall be considered. Access to the Site from adjacent roads shall be designed so as to interfere as little as possible with traffic flow on these roads and to permit vehicles a rapid and safe ingress and egress to the Site.

**Satisfied**

9. Lighting shall be reviewed to ensure safe movement of persons and vehicles and reflection on public property for security purposes and to minimize glare and reflection on adjacent properties. Lighting shall be reviewed to assure that it enhances the appearance of structures at night.

**Satisfied**

10. Landscape and paving materials shall be reviewed to ensure an adequate relationship with and enhancement of the overall Site Plan design.  
**Satisfied**
11. Buffering materials shall be reviewed to ensure that headlights of vehicles, noise, and light from structures are adequately shielded from public view, adjacent properties and pedestrian areas.  
**Satisfied**
12. The proposed structure has an orientation and massing which is sensitive to and compatible with the building site and surrounding area and which creates or maintains important view corridor(s).  
**Satisfied**
13. The building has, where feasible, space in that part of the ground floor fronting a street or streets which is to be occupied for residential or commercial uses; likewise, the upper floors of the pedestal portion of the proposed building fronting a street, or streets shall have residential or commercial spaces, shall have the appearance of being a residential or commercial space or shall have an architectural treatment which shall buffer the appearance of the parking structure from the surrounding area and is integrated with the overall appearance of the project.  
**Satisfied**
14. The building shall have an appropriate and fully integrated rooftop architectural treatment which substantially screens all mechanical equipment, stairs and elevator towers.  
**Satisfied**
15. An addition on a building site shall be designed, sited and massed in a manner which is sensitive to and compatible with the existing improvement(s).  
**Not Applicable**
16. All portions of a project fronting a street or sidewalk shall incorporate an architecturally appropriate amount of transparency at the first level in order to achieve pedestrian compatibility and adequate visual interest.  
**Not Applicable**
17. The location, design, screening and buffering of all required service bays, delivery bays, trash and refuse receptacles, as well as trash rooms shall be arranged so as to have a minimal impact on adjacent properties.  
**Not Applicable**

**STAFF ANALYSIS:**

This application was previously approved on September 4, 2012 for the construction of a new two-story home on a parcel that contained a pre-1942 single-family home. Then on September 4, 2014 the applicant received approval for several design modifications. At the time of this approval, the following condition was added, based upon public input:

- (4) This Order, and the prior Order adopted September 4, 2012 for DRB file number 22911, and any construction authorized by or permits issued pursuant to either order, are subject to the adjudication of the boundary dispute between the applicant and its neighbor by courts of competent jurisdiction or other resolution of such dispute.

The applicant is requesting removal of this condition.

**LEGAL ANALYSIS:**

The original DRB order dates back to 2012. By the time of the modification hearing of September 4, 2014, the Applicant was already under construction to build in compliance with the 2012 order. During construction, the Applicant desired some design modifications along one façade of the home, and requested a modification of the 2012 order.

During the September 4, 2014 hearing before the DRB, the Applicant's neighbor, (hereinafter "neighbor"), hired land use counsel who presented the language for the condition to the Board. Ultimately, the condition was placed in the order, without objection. The Applicant was represented by different counsel than he currently has today and did not appeal the DRB order. The City Attorney representing the Board during the hearing subsequently retired. As the attorneys are no longer of record, it is truly unclear what the provision was intending to accomplish. Nevertheless, ordinarily, it is the position of the City Attorney's Office and of the Planning Department that the City does not get in the middle of third-party, neighbor disputes. In other words, the City does not take sides in private litigation. As counsel to the DRB, I recommend in the future, that the Board not place such conditions in its orders as it makes the City a part of the dispute between private parties.

The parties (Applicant and the neighbor) have proceeded to trial and are awaiting a final decision by the Court as to the location of the property line demarcating the two properties.

Ultimately, as to the actual language of the condition --- the City Attorney's Office is unsure what the condition means.

Hypothetically, assume the neighbor wins the property line dispute, thus decreasing the size of Applicant's property. In this scenario, it is unclear whether the condition was intended to make the Applicant's project "legal non-conforming" (in which case the building would remain) or makes the Applicant's project "illegal, non-conforming."

The Applicant developed to within the maximum developable envelope allowed under the land development regulations. If the Applicant's property becomes "smaller" because of a shift in the property line, then the Applicant's project would exceed the maximum developable envelope. As a legal non-conforming property, the Applicant's construction could remain, but, with the understanding it does not conform to the Code, and probably could not be rebuilt at its current size, if demolished. From a practical point of view, all that would happen is that the neighbor's property would get larger with the change in boundary.

However, the Condition could mean, that the project, as approved, could be considered "**illegal**, and non-conforming," thus requiring the Applicant to seek variances. Additionally, if

the variances are not granted, or appealed and reversed by the Appellate Court, the Applicant's home could be demolished for being constructed not in conformance to the maximum developable envelope for the site.

Binding a prior 2012 order, by the modified order of 2014, with the Condition, appears to attempt retroactive application. If a City were to adopt an ordinance with retroactive application, it would be challenged for due process violations and possible "takings" challenges. Further, as you may be aware, the Applicant had already started construction based upon that 2012 order. Minor modifications to the design were instituted in the 2014 modification order. Therefore, if retroactive in application, it could mean that the entire structure could be at risk of a determination that the structure is illegal, and nonconforming.

As the language is not clear, and as the City should not be in the middle of a dispute between the parties, the City Attorney's Office has no objection to the removal of the Condition, particularly, due to the execution of the indemnification and hold harmless agreement executed by the Applicant, indemnifying the City, and protecting the City from any challenge relating to this action. As such, the City Attorney's Office recommends, as a condition of approval, an amended hold harmless and indemnification agreement, to require that the Applicant indemnify and hold harmless the DRB and the City from litigation and damages relating to the removal of the Condition.

**RECOMMENDATION:**

In view of the foregoing analysis, staff recommends the application for a modification to the Final Order be **approved**, subject to the conditions enumerated in the attached Draft Order.

TRM/JGM

**DESIGN REVIEW BOARD**  
**City of Miami Beach, Florida**

MEETING DATE: March 01, 2016

FILE NO: 22911

PROPERTY: 2300 Bay Avenue

LEGAL: The part of Lot 12, Block 3-H, of Island No. 3 of Sunset Islands, except a triangular portion thereof, According to the Plat Thereof, as Recorded in Plat Book 40, Page 8, of the Public Records of Miami-Dade County, Florida.

IN RE: The Application for Design Review Approval for the modification to a previously issued Design Review approval for the construction of a new two-story single family home to replace an existing one-story home, to be demolished. Specifically, the applicant is requesting design modifications to the exterior elevations.

**MODIFIED SUPPLEMENTAL ORDER**

The applicant, George L. Lindemann Jr. Trust, filed an application with the City of Miami Beach Planning Department for Design Review Approval.

The City of Miami Beach Design Review Board makes the following FINDINGS OF FACT, based upon the evidence, information, testimony and materials presented at the public hearing and which are part of the record for this matter:

- A. Based on the plans and documents submitted with the application, testimony and information provided by the applicant, and the reasons set forth in the Planning Department Staff Report, the project as submitted is consistent with Design Review Criteria in Section 118-251 of the Miami Beach Code.
- B. The project would remain consistent with the criteria and requirements of section 118-251 if the following conditions are met:
  1. The following conditions are pursuant to the materials, details, and design for the further modifications to the plans approved by the Design Review Board on

September 02, 2014 (The prior conditions pursuant to Design Review Board Order No. 22991, remain in full force and effect except as modified herein).

2. Revised elevation, site plan and floor plan drawings shall be submitted to and approved by staff; at a minimum, such drawings shall incorporate the following:
  - a. A copy of all pages of the recorded Final Order shall be scanned into the plans submitted for building permit, and shall be located immediately after the front cover page of the permit plans.
  - b. Prior to the issuance of a Certificate of Occupancy, the project Architect shall verify, in writing, that the subject project has been constructed in accordance with the plans approved by the Planning Department for Building Permit.
3. The final design details of the decorative wall tiling system shall be submitted, in a manner to be reviewed and approved by staff consistent with the Design Review Criteria and/or the directions from the Board.
- ~~4. This Order, and the prior Order adopted September 4, 2012 for DRB file number 22911, and any construction authorized by or permits issued pursuant to either order, are subject to the adjudication of the boundary dispute between the applicant and its neighbor by courts of competent jurisdiction or other resolution of such dispute.~~
5. The final building plans shall meet all other requirements of the Land Development Regulations of the City Code.
6. The Final Order shall be recorded in the Public Records of Miami-Dade County, prior to the issuance of a Building Permit.
6. Satisfaction of all conditions is required for the Planning Department to give its approval on a Certificate of Occupancy; a Temporary Certificate of Occupancy or Partial Certificate of Occupancy may also be conditionally granted Planning Departmental approval.
7. The Final Order is not severable, and if any provision or condition hereof is held void or unconstitutional in a final decision by a court of competent jurisdiction, the order shall be returned to the Board for reconsideration as to whether the order meets the criteria for approval absent the stricken provision or condition, and/or it is appropriate to modify the remaining conditions or impose new conditions.
8. The conditions of approval herein are binding on the applicant, the property's owners, operators, and all successors in interest and assigns.
9. Nothing in this order authorizes a violation of the City Code or other applicable law, nor allows a relaxation of any requirement or standard set forth in the City Code.

IT IS HEREBY ORDERED, based upon the foregoing findings of fact, the evidence, information, testimony and materials presented at the public hearing, which are part of the record for this matter, and the staff report and analysis, which are adopted herein, including the staff

recommendations which were adopted by the Board, that the Application for Design Review approval is GRANTED for the above-referenced project subject to those certain conditions specified in Paragraph B of the Findings of Fact (Condition Nos. 1-9, inclusive) hereof, to which the applicant has agreed.

PROVIDED, the applicant shall build substantially in accordance with the plans approved by the Design Review Board, as determined by staff, entitled "2300 Bay Avenue", as prepared by **Shulman + Associates** signed and sealed June 22, 2014 and revised sheets date June 26, 2014, modified in accordance with the conditions set forth in this Order and staff review and approval.

No building permit may be issued unless and until all conditions of approval that must be satisfied prior to permit issuance as set forth in this Order have been met. The issuance of Design Review Approval does not relieve the applicant from obtaining all other required Municipal, County and/or State reviews and permits, including final zoning approval. If adequate handicapped access is not provided on the Board-approved plans, this approval does not mean that such handicapped access is not required.

When requesting a building permit, the plans submitted to the Building Department for permit shall be consistent with the plans approved by the Board, modified in accordance with the conditions set forth in this Order.

If the Full Building Permit for the project is not issued within eighteen (18) months of the meeting date at which the original Design Review Approval was granted, the Design Review Approval will expire and become null and void, unless the applicant makes application to the Board for an extension of time, in accordance with the requirements and procedures of Chapter 118 of the City Code; the granting of any such extension of time shall be at the discretion of the Board. At the hearing on any such application, the Board may deny or approve the request and modify the above conditions or impose additional conditions. If the Full Building Permit should expire for any reason (including but not limited to construction not commencing and continuing, with required inspections, in accordance with the applicable Building Code), the Design Review Approval will expire and become null and void.

In accordance with Section 118-264 of the City Code, the violation of any conditions and safeguards that are a part of this Order shall be deemed a violation of the land development regulations of the City Code.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

DESIGN REVIEW BOARD  
THE CITY OF MIAMI BEACH, FLORIDA

BY: \_\_\_\_\_  
THOMAS R. MOONEY, AICP  
PLANNING DIRECTOR  
FOR THE CHAIR

